



1192482



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-L

February 28, 2011

Bill Duffy
Counsel for Atlantic Richfield
1550 Seventeenth Street, Suite 500
Denver, CO 80202

Re: Administrative Order on Consent Negotiations regarding Rico, Colorado.

Dear Mr. Duffy,

Enclosed please find a draft Administrative Order on Consent, and attached Work Plan for Rico, Colorado. When EPA and Atlantic Richfield first began discussing a schedule to negotiate the AOC, both the schedule and Work Plan were anticipated to cover work in Rico only through a thirty percent design phase. As indicated in my February 4, 2011 letter, after discussing the matter with the State of Colorado, EPA and the State decided that the most efficient way to handle the work would be to cover design and construction in one Order. This change in the scope of work has delayed EPA in getting another draft AOC and Work Plan to you.

The Work Plan is substantially expanded in the scope from the draft provided by Atlantic Richfield in January. In addition to the scope changes, there are several modifications to the original text and outline. Because EPA did not receive a writable version and because of the extent of these changes, it was decided that tracking or hi-lighting the changes was not practical. Many of these changes and associated tasks have been discussed by the project coordinators for EPA and AR prior to this letter, and the attached version of the Work Plan is writeable for your convenience.

We understand that a primary point of concern is financial assurance, and the enclosed AOC's financial assurance language reflects EPA's October draft AOC. The terms of EPA's October draft AOC required Atlantic Richfield to maintain a liquid financial assurance instrument for the length of the AOC. The AOC also contained language stating that, once the CERCLA 108(b) financial assurance regulations become final, Atlantic Richfield could provide any form of assurance allowed under the regulations. At the December 15, 2010 meeting, Atlantic Richfield requested changes in the language to allow for non-liquid financial assurance instruments. Because of financial assurance issues at other Atlantic Richfield sites, and the pending 108(b) regulations, EPA noted the current policy requiring liquid financial assurance instruments. EPA also noted that once 108(b) regulations become final, anything allowed in the

regulations would be allowed under the terms of the AOC.

On January 20, 2011, Atlantic Richfield transmitted to EPA a red-lined draft AOC. In the red-line draft, Atlantic Richfield changed the proposed financial assurance language to allow for non-liquid financial assurance instruments. On January 26, 2011, while discussing another site with Atlantic Richfield, EPA representatives re-iterated that Atlantic Richfield will be required to provide liquid financial assurance instruments for all Region 8 Sites under new AOC's. During the same discussion, Atlantic Richfield's Robin Bullock indicated that Atlantic Richfield will no longer be entering AOC's that do not allow non-liquid financial assurance instruments.

On January 31, 2011, I contacted you via email about the status of the AOC in Rico, and asked whether Atlantic Richfield would still be willing to enter an AOC requiring liquid financial assurance instruments. You responded that you transmitted my correspondence to your client, and that your understanding was that Atlantic Richfield still supported the draft it sent, which allowed for non-liquid financial assurance instruments.

EPA's position, as stated both in our December 15, 2011 meeting, and in the January 26, 2011 phone call, is that EPA will only accept liquid financial assurance instruments until 108(b) regulations are finalized. Currently, EPA prefers to continue negotiating the attached AOC with Atlantic Richfield. However, if Atlantic Richfield is no longer willing to enter an AOC requiring liquid financial assurance instruments, we request that response be indicated in writing by AR by close of business Friday, March 4, 2011. If we have not received your response to this question by that date, we will assume that AR is no longer interested in negotiating an AOC.

Please let me know if you would like to discuss this matter in the interim.

Sincerely,



Amelia Piggott
Enforcement Attorney
U.S. EPA Region 8
303.312.6410

cc: Steve Way, EPA
Carol Pokorny, EPA
Nathan Block, Atlantic Richfield
Adam Cohen, Davis, Graham and Stubbs